

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**RANDY L. WHITE**

Claimant

VS.

**LOVE BOX COMPANY, INC.**

Respondent

Self-Insured

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Docket No. 262,008

**ORDER**

Claimant appeals the February 20, 2001, preliminary hearing Order of Administrative Law Judge John D. Clark. The Administrative Law Judge found claimant had proven accidental injury arising out of and in the course of his employment with respondent on June 14, 2000, but had failed to provide timely notice to respondent of those injuries pursuant to K.S.A. 44-520.

**ISSUES**

Timely notice is the only issue before the Board.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant alleges accidental injury on June 14, 2000, while working for respondent on the 38-Flexo job. The job involved feeding paper into a Flexo printer, which required claimant deal with weights of between 30 and 50 pounds on a regular basis.

Claimant had just returned from a 3-month period of light duty after undergoing carpal tunnel surgery. June 14, 2000, was his first day back to regular work.

Claimant reported no injuries to his supervisors on that date. He did work a full 8-hour shift.

The next morning, claimant alleges he contacted Terry Rice, his supervisor, and told him he was sore and would not be able to work. Claimant took the remainder of the day off. Respondent representative Linda Gregg, the benefits associate, testified that she was

aware claimant was having problems on June 14, but the symptoms described to her included a fever, a sore throat, coughing and sneezing.

Claimant was first treated by Stephen J. Schneider, D.O., claimant's personal physician, in Haysville, Kansas, on June 16, 2000. At that time, claimant's symptoms included fever, headache, sore throat, coughing and sneezing. Claimant advised Dr. Schneider this condition had been in existence for approximately three days. Claimant returned to work for respondent for one day on June 26, 2000. It is unclear, however, what job claimant worked on that date or how much of the day claimant actually worked. Claimant has not been back to respondent since that time.

Claimant filled out a short-term disability form shortly after the June 26, 2000, work date, alleging problems with his allergies. Claimant returned to respondent on October 17, 2000, and filled out a long-term disability form, again alleging allergy problems related to difficulty breathing and chest pains. The first mention of any shoulder involvement did not occur until October 26, 2000, when claimant advised the doctor he had discovered information on the internet, describing a condition called costal chondritis. Dr. Schneider issued a letter to claimant's attorney on February 7, 2001, advising the costal chondritis was caused by the heavy lifting performed at work.

K.S.A. 44-520 obligates a claimant to provide notice of an accidental injury to respondent within 10 days of the date of accident, "stating the time and place and particulars thereof."

The 10-day notice shall not bar any proceedings for compensation if the claimant shows that his failure to provide notice under this section was due to just cause. Such a showing will expand the notice time to 75 days from the date of accident.

Claimant's general comment to his supervisor that he was sore and unable to work would not constitute notice of an accident. The only specific information provided to respondent on or about June 14, 2000, was that claimant was experiencing a fever and a sore throat, and was coughing and sneezing. There was no mention of any shoulder involvement at that time. Additionally, when claimant first sought medical treatment with Dr. Schneider two days later, he exhibited the same symptoms, including fever, headaches, sore throat, coughing and sneezing, as was described to respondent's benefits associate, Linda Gregg.

The first mention of any shoulder involvement did not occur until October 26, 2000, approximately 134 days after claimant's alleged date of accident of June 14, 2000. The Appeals Board finds, based upon the evidence, claimant did not provide notice of accident to respondent within 10 days as is required by K.S.A. 44-520.

Additionally, K.S.A. 44-520 allows the notice time limits to extend to 75 days beyond the accident, if just cause is shown. However, as the first notice which can be verified in this instance is 134 days beyond the date of accident, the 75-day just cause provision would not be an issue in this case. Lawton v. Richman-Helstrom Trucking, Inc., WCAB Docket Nos. 228,799 and 228,800 (June 1998). The Appeals Board finds that claimant failed to provide timely notice to respondent of an accidental injury occurring on June 14, 2000, pursuant to K.S.A. 44-520 and, for the above reasons, benefits should be denied.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated February 20, 2001, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2001.

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BOARD MEMBER

c: W. Walter Craig, Wichita, KS  
Kathleen W. Wohlgemuth, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director